

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 971 OF 2016

IN

FIRST APPEAL NO. 33 OF 2016

VICTOR DANIEL.,

... Applicant

Versus

UNITED INDIA INSURANCE CO. LTD.,

... Respondent

Adv. C. Coutinho with Adv. Shailesh Redkar for the Applicant.

Adv. A.R.S. Netravalkar for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 10th February, 2017

P.C.:

This is an application for withdrawal of 50% of the amount of compensation deposited before this Court.

2. The applicant had suffered a vehicular accident and the Claims Tribunal by the impugned judgment and award has granted compensation of Rs.73,55,580/- along with interest @ 9% p.a from the date of the application till payment. The defence of the applicant was that the driver of the offending vehicle was not holding a valid and effective driving licence, which has been accepted. However, in view of the decision of the Hon'ble Supreme Court in the case of S. IYYAPAN VS. UNITED INDIA INSURANCE COMPANY LIMITED AND ANOTHER (2013) 7 SCC 62 and the other cases on the point, the Tribunal

has directed the applicant to deposit the amount, subject to right of recovery from the insured.

3. The applicant in pursuance of the order dated 26/8/2016 has deposited an amount of Rs.98,51,419/- before this Court on 14/10/2016. The applicant is seeking withdrawal of 50% of the amount.

4. I have heard Shri Coutinho, the learned counsel for the applicant and Shri Netravalkar, the learned counsel for the respondent. With the assistance of the learned counsel for the parties I have gone through the impugned award.

5. It appears that the applicant suffered permanent disablement on account of the injuries suffered in the accident as there was loss of one eye, one hand, (dis-figuration of the face) and complete loss of sense of smell and taste. The Tribunal fixed the monthly income at Rs.25,000/- and after applying appropriate multiplier on the basis of the age of the applicant which was 29 years on the date of the accident, has arrived at the quantum of compensation as aforesaid.

6. The learned counsel for the applicant submits that an amount of Rs.10.00 lakhs has been spent on medical treatment as has been accepted by the Tribunal and considering the extensive

nature of the injuries and the permanent disability at least 50% of the amount may be allowed to be withdrawn subject to the conditions as may be imposed by this Court.

7. On the contrary, it is submitted by the learned counsel for the respondent that the driver was not holding a valid driving licence which would exonerate the insurance company. It is submitted that the income is also taken on the higher side and the compensation granted is exorbitant and in the event the respondent succeeds in the appeal, the respondent would find it difficult to recover the amount.

8. I have carefully considered the circumstances and the submissions made. Prima facie at this stage it appears that although there is a finding that the driver was not holding a valid licence in view of the decision of the Hon'ble Supreme Court in the case of S. IYYAPAN (*supra*), the respondent would be liable to pay the compensation subject to the right of recovery from the injured. Considering the fact that there is also a challenge on the aspect of the quantum of the compensation granted and taking into account that, an amount of Rs.10.00 lakhs has been spent on medical treatment, I find that a withdrawal of a part of the compensation can be permitted subject to conditions. In my considered view, it would appropriate if an amount of Rs.10.00 lakhs is released on the applicant furnishing an undertaking and

an additional sum of Rs.15.00 lakhs is released subject to the applicant giving security to the satisfaction of the Registrar (Judicial) of this Court. This will adequately safeguard the interest of both the parties. In the result the following order is passed:

Order:

- (i) The office shall permit withdrawal of Rs.10.00 lakhs on the applicant furnishing an undertaking, that he will bring back the amount, in the event the appeal is allowed. The undertaking shall be furnished before the Registrar (Judicial) of this Court.
- (ii) An additional sum of Rs.15.00 lakhs be released in favour of the applicant, subject to furnishing of security to the satisfaction of the Registrar (Judicial) of this Court.
- (iii) This shall be without prejudice to the rival contentions of the parties in the appeal.

C. V. BHADANG, J.

ap/-